

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 55272
Lucky's Redi-Mix Co. LLC
RN106526981
Docket No. 2017-1536-AIR-E

Page 1 of 2

Order Type:

Default Order

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

31 Rainbow Road, Cuero, Dewitt County

Type of Operation:

concrete batch plant

Other Significant Matters:

Additional Pending Enforcement Actions: 2017-0985-MLM-E (EDPRP filed January 10, 2019)

Past-Due Penalties: None

Past-Due Fees: \$3,127.84 (Account No. 21511782)

Other: None

Interested Third-Parties: None

Texas Register Publication Date: March 22, 2019

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,625

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$2,625

Compliance History Classifications:

Person/CN – Satisfactory

Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Lucky's Redi-Mix Co. LLC
RN106526981
Docket No. 2017-1536-AIR-E

Investigation Information

Complaint Date(s): June 8, 2016 and April 4, 2017

Complaint Information: June 8, 2016: Complaint alleging large amount of dust in residential property caused by Respondent.

April 4, 2017: Complaint alleging large amount of dust in residential property caused by Respondent and unauthorized disposal of chemical waste in pits on Respondent's property.

Date(s) of Investigation: June 20, 2016 through July 5, 2016 and April 13, 2017 through April 29, 2017

Date(s) of NOV(s): September 21, 2016 and October 25, 2016

Date(s) of NOE(s): May 18, 2017

Violation Information

Failed to prevent dust nuisance conditions from impacting off-property receptors [TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days, implement measures and/or procedures to minimize dust nuisances from the Plant.
2. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 1.

Litigation Information

Date Petition(s) Filed: July 18, 2018; August 3, 2018

Date Green Card(s) Signed: Unclaimed; Unclaimed (first class not returned)

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Clayton Smith, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Division Agenda Coordinator: Janice Hernandez, (512) 239-2575

TCEQ Enforcement Coordinator: Carol McGrath, Enforcement Division, (210) 403-4063

TCEQ Regional Contact: Kelly Ruble, Corpus Christi Regional Office, (361) 825-3100

Respondent Contact: Mark Mahoney, Manager, Lucky's Redi-Mix Co. LLC, 31 Rainbow Road, Cuero, Texas 77954

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	22-May-2017		
	PCW	21-May-2018	Screening	12-Oct-2017
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Lucky's Redi-Mix Co. LLC			
Reg. Ent. Ref. No.	RN106526981			
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	55272	No. of Violations	1
Docket No.	2017-1536-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	David Carney
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5.0%	Adjustment	Subtotals 2, 3, & 7	\$125
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Notes	Enhancement for one NOV with same/similar violations.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$947	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes				
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Final Penalty Amount	\$2,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,625
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.			
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PAYABLE PENALTY	\$2,625
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Screening Date 12-Oct-2017

Docket No. 2017-1536-AIR-E

PCW

Respondent Lucky's Redi-Mix Co. LLC

Case ID No. 55272

Reg. Ent. Reference No. RN106526981

Media [Statute] Air

Enf. Coordinator David Carney

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 12-Oct-2017
Respondent Lucky's Redi-Mix Co. LLC
Case ID No. 55272
Reg. Ent. Reference No. RN106526981
Media [Statute] Air
Enf. Coordinator David Carney

Docket No. 2017-1536-AIR-E

PCW

*Policy Revision 4 (April 2014)
PCW Revision March 26, 2014*

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description

Failed to prevent dust nuisance conditions from impacting off-property receptors. Specifically, laboratory analysis of a tape-lift sample collected from an on-site dirt road on June 21, 2016, showed that it matched a tape-lift sample collected from an off-property receptor on June 20, 2016. Also, laboratory analysis of a tape-lift sample collected from a sand stockpile housed in an open-top bunker on-site on April 13, 2017, showed that it matched tape-lift samples collected from an off-property receptor on April 13, 2017.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 2 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

Two single events are recommended for the nuisance conditions documented on June 20, 2016 and April 13, 2017.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$947

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Lucky's Redi-Mix Co. LLC
Case ID No. 55272
Reg. Ent. Reference No. RN106526981
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	20-Jun-2016	12-May-2018	1.89	\$947	n/a	\$947

Notes for DELAYED costs

Estimated delayed costs to implement measures and/or procedures to minimize dust nuisances from the Plant. The Date Required is the initial date of non-compliance and the Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$947



Compliance History Report

Compliance History Report for CN603849118, RN106526981, Rating Year 2017 which includes Compliance History (CH) components from September 1, 2012, through August 31, 2017.

Customer, Respondent, or Owner/Operator:	CN603849118, Lucky's Redi-Mix Co. LLC	Classification:	SATISFACTORY	Rating:	25.75
Regulated Entity:	RN106526981, Luckys CBP No 2	Classification:	SATISFACTORY	Rating:	29.00
Complexity Points:	1	Repeat Violator:	NO		
CH Group:	10 - Cement and Concrete Product Manufacturing				
Location:	31 RAINBOW ROAD, CUERO, TEXAS 77954-6869, DEWITT COUNTY				
TCEQ Region:	REGION 14 - CORPUS CHRISTI				
ID Number(s):					
AIR NEW SOURCE PERMITS REGISTRATION	106325	AIR NEW SOURCE PERMITS ACCOUNT NUMBER	960816N		
Compliance History Period:	September 01, 2012 to August 31, 2017	Rating Year:	2017	Rating Date:	09/01/2017
Date Compliance History Report Prepared:	October 12, 2017				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	October 12, 2012 to October 12, 2017				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	David Carney		Phone:	(512) 239-2583	

Site and Owner/Operator History:

- | | |
|--|----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | NO |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- | | | | | |
|---|--------------|--|-----------|--------------------------|
| 1 | Date: | 05/12/2017 | (1355360) | |
| | Self Report? | NO | | Classification: Moderate |
| | Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c)
5(D) PERMIT
5C THSC Chapter 382 382.085(b) | | |
| | Description: | Failure to install an automatic shut-off or warning device on storage silos. | | |
| | Self Report? | NO | | Classification: Moderate |
| | Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THSC Chapter 382 382.085(b)
9(E)(i) & 9(E)(ii) PERMIT | | |

Description:	Failure to construct dust suppressing fencing or other barriers as a border around roads, other traffic areas, and work areas in lieu of meeting the buffer distance requirements for roads and stockpiles.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b) 9(E)(iii) PERMIT		
Description:	Failure to contain stockpiles within a three-walled bunker that extends at least two feet above the top of the stockpile.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b) 9(F) PERMIT		
Description:	Failure to pave all entry, exit, and in-plant roads and main traffic routes associated with the operation of the concrete batch plant with a cohesive hard surface that can be maintained intact.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5(H) PERMIT 5C THSC Chapter 382 382.085(b)		
Description:	Failure to conduct quarterly visible emissions observations.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b) 9(C) PERMIT		
Description:	Failure to maintain an intact three-sided curtain that extends below the mixer truck-receiving funnel.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b) 6(C) PERMIT		
Description:	Failure to install engine exhaust stacks at a minimum of eight feet tall.		

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LUCKY'S REDI-MIX CO. LLC;
RN106526981**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2017-1536-AIR-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Lucky's Redi-Mix Co. LLC ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates a concrete batch plant located at 31 Rainbow Road in Cuero, Dewitt County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During investigations conducted on June 20, 2016 through July 5, 2016, and April 13, 2017 through April 29, 2017, an investigator documented that Respondent failed to prevent dust nuisance conditions from impacting off-property receptors. Specifically, laboratory analysis of a tape-lift sample collected from an on-site dirt road on June 21, 2016, showed that it matched a tape-lift sample collected from an off-property receptor on June 20, 2016. Also, laboratory analysis of a tape-lift sample collected from a sand stockpile housed in an open-top bunker on-site on April 13, 2017, showed that it matched tape-lift samples collected from an off-property receptor on April 13, 2017.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Lucky's Redi-Mix Co. LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on July 18, 2018.
4. The EDPRP was mailed to Respondent's last known address on July 18, 2018, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on August 3, 2018.

6. By letter dated August 3, 2018, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH AND SAFETY CODE ch. 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent dust nuisance conditions from impacting off-property receptors, in violation of TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4.
3. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be

constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.

2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Lucky's Redi-Mix Co. LLC; Docket No. 2017-1536-AIR-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, implement measures and/or procedures to minimize dust nuisances from the Plant; and
 - b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Air Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF ISAAC TA

STATE OF TEXAS

§

COUNTY OF TRAVIS

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§

"My name is Isaac Ta. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Lucky's Redi-Mix Co. LLC" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 18, 2018.

The EDPRP was mailed to Respondent's last known address on July 18, 2018, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on August 3, 2018.

The EDPRP was mailed to Respondent's last known address on August 3, 2018, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

Isaac Ta, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Isaac Ta, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 28th day of February, A.D. 2019.



NOTARY WITHOUT BOND

Notary Public, State of Texas